

## Railroad Retirement Board

## § 220.36

### § 220.29 Work that is considered substantial gainful activity.

Work is considered to be substantial gainful activity if it—

(a) Involves doing significant and productive physical or mental duties; and

(b) Is done or is intended to be done for pay or profit. (See § 220.141 for a detailed explanation of what is substantial gainful activity.)

### § 220.30 Special period required for eligibility of widow(er)s.

In order to be found disabled for any regular employment, a widow(er) must have a permanent physical or mental impairment which prevented work in any regular employment since before the end of a specific period as defined in part 216 of this chapter.

## Subpart E—Disability Determinations Governed by the Regulations of the Social Security Administration

### § 220.35 Introduction.

In addition to its authority to decide whether a claimant is disabled under the Railroad Retirement Act, the Board has authority in certain instances to decide whether a claimant is disabled as that term is defined in the Social Security Act. In making these decisions the Board must apply the regulations of the Social Security Administration in the same manner as does the Secretary of Health and Human Services in making disability decisions under the Social Security Act. Regulations of the Social Security Administration concerning disability are found at part 404, subpart P of this title.

### § 220.36 Period of disability.

(a) *General.* In order to receive an annuity based upon a disability, an employee must be found disabled under the Railroad Retirement Act. If an employee is found disabled under the Railroad Retirement Act, the Board will determine whether he is disabled under the Social Security Act to qualify for a period of disability as defined in that Act.

(b) *Period of disability—(1) Definition and effect.* A period of disability is a continuous period of time during which an employee is disabled as that term is defined in § 404.1505 of this title. A period of disability established by the Board—

(i) Preserves the disabled employee's earnings record as it is when the period begins;

(ii) Protects the insured status required for entitlement to social security overall minimum;

(iii) May cause an increase in the rate of an employee, spouse, or survivor annuity; or

(iv) May permit a disabled employee to receive Medicare benefits in addition to an annuity under the Railroad Retirement Act.

(2) *Effect on benefits.* The establishment of a period of disability for the employee will never cause a denial or reduction in benefits under the Railroad Retirement Act or Social Security Act, but it will always be used to establish Medicare entitlement before age 65.

(3) *Who may establish a period of disability.* The Railroad Retirement Board or the Social Security Administration may establish a period of disability. However, the decision of one agency is not binding upon the other agency.

(4) *When the Board may establish a period of disability.* The Board has independent authority to decide whether or not to establish a period of disability for any employee who was awarded an annuity under the Railroad Retirement Act, or who—

(i) Has applied for a disability annuity; and

(ii) Has at least 10 years of railroad service.

(5) *When an employee is entitled to a period of disability.* An employee is entitled to a period of disability if he or she meets the following requirements:

(i) The employee is disabled under the Social Security Act, as described in § 404.1505 of this title.

(ii) The employee is insured for a period of disability under § 404.130 of this title based on combined railroad and social security earnings.

(iii) The employee files an application as shown in subparagraph (b)(6) of this section.

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(iv) At least 5 consecutive months elapse from the month in which the period of disability begins and before the month in which it would end.

(6) *Application for a period of disability.*

(i) An application for an employee disability annuity under the Railroad Retirement Act or an employee disability benefit under the Social Security Act is also an application for a period of disability.

(ii) An employee who is receiving an age annuity or who was previously denied a period of disability must file a separate application for a period of disability.

(iii) In order to be entitled to a period of disability, an employee must apply while he or she is disabled or not later than 12 months after the month in which the period of disability ends.

(iv) An employee who is unable to apply within the 12-month period after the period of disability ends because his or her physical condition limited his or her activities to the extent that he or she could not complete and sign an application or because he or she was mentally incompetent, may apply no later than 36 months after the period of disability ends.

(v) A period of disability can also be established on the basis of an application filed within 3 months after the month a disabled employee died.

(c) *Social security overall minimum.* The social security overall minimum provision of the Railroad Retirement Act guarantees that the total monthly annuities payable to an employee and his or her family will not be less than the total monthly benefit which would be payable under the Social Security Act if the employee's railroad service were credited as employment under the Social Security Act.

(The information collection requirements contained in paragraph (b)(6) were approved by the Office of Management and Budget under control number 3220-0002)

### **§ 220.37 When a child's disability determination is governed by the regulations of the Social Security Administration.**

(a) In order to receive an annuity based upon disability, a child of a deceased employee must be found disabled under the Railroad Retirement

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Act. However, in addition to this determination, the child must be found disabled under the Social Security Act in order to qualify for Medicare based upon disability.

(b) Although the child of a living employee may not receive an annuity under the Railroad Retirement Act, he or she, if found disabled under the Social Security Act, may qualify for the following:

(1) Inclusion as a disabled child in the employee's annuity rate under the social security overall minimum.

(2) Entitlement to Medicare based upon disability.

### **§ 220.38 When a widow(er)'s disability determination is governed by the regulations of the Social Security Administration.**

In order to receive an annuity based upon disability, a widow(er) must be found disabled under the Railroad Retirement Act. However, in addition to this determination, the widow(er) must be found disabled under the Social Security Act in order to qualify for early Medicare based upon disability.

### **§ 220.39 Disability determination for a surviving divorced spouse or remarried widow(er).**

A surviving divorced spouse or a remarried widow(er) must be found disabled under the Social Security Act in order to qualify for both an annuity under the Railroad Retirement Act and early Medicare based upon disability. Disability determinations for surviving divorced spouses and remarried widow(er)s are governed by the applicable regulations of the Social Security Administration, found at § 404.1577 of this title.

## **Subpart F—Evidence of Disability**

### **§ 220.45 Providing evidence of disability.**

(a) *General.* The claimant for a disability annuity is responsible for providing evidence of the claimed disability and the effect of the disability on the ability to work. The Board will assist the claimant, when necessary, in obtaining the required evidence. At its discretion, the Board will arrange for an examination by a consultant at the